



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1998

The Honorable William P. Smith
Briscoe County Attorney
P.O. Box 119
Silverton, Texas 79257

Letter Opinion No. 98-006

Re: Whether a county commissioners court, in distributing the corpus of the county permanent school fund pursuant to article VII, section 6b of the Texas Constitution, should take into account the distribution of a neighboring county's fund, and related questions (RQ-997)

Dear Mr. Smith:

You ask about the proper distribution of the corpus of the Briscoe County permanent school fund. In essence, you ask whether the Briscoe County Commissioners Court, in distributing the county permanent school fund pursuant to article VII, section 6b of the Texas Constitution, should take into account a neighboring county's distribution of its permanent school fund interest and corpus to a school district embracing territory in both counties. We advise the county against doing so. You also appear to ask whether the Briscoe County Commissioners Court, in distributing the corpus of the Briscoe County permanent school fund, should take into account the Briscoe County permanent school fund interest distributions. For the reasons explained below, we cannot resolve this issue.

Article VII, section 6 provides in pertinent part that county school lands "and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law. . . ." Numerous court opinions and opinions of this office treat a county permanent school fund as a trust and stress the fiduciary nature of a county's duty to invest the county permanent school fund on behalf of public schools in the county.¹ As one court has stated,

¹See, e.g., *Delta County v. Blackburn*, 93 S.W. 419, 422 (Tex. 1906) (counties are trustees for benefit of state's public schools); *County Sch. Trustees v. Brazoria County*, 240 S.W. 675, 676 (Tex. Civ. App.--Galveston 1922, no writ) (county held fund as trustee for schools); *Comanche County v. Burks*, 166 S.W. 470, 473-74 (Tex. Civ. App.--Fort Worth 1914, writ ref'd); see also Attorney General Opinions H-506 (1975) at 2 (county commissioners court acts in fiduciary capacity as trustee of permanent school fund), H-239 (1974) at 1 ("The county permanent school fund is impressed with a trust in favor of the local inhabitants and schools, and the commissioners court administers the fund as trustee, with the duties of trustee."), M-1104 (1972) (applying Texas Trust Act to county permanent school fund), V-1089 (1950) at 3 (commissioners court is trustee of permanent school fund; if commissioners court abused its discretion by failing to invest fund for benefit of permanent school fund, order would not be valid).

The county for which [the county commissioners] act holds the proceeds as an *express trust*, and the investment thereof in the securities named in the Constitution or otherwise, as may be prescribed by law, necessarily involves an exercise of judgment and discretion. . . . [W]e see no reason why the county should not be held to the same rules of law that are applicable to other trustees.

Comanche County v. Burks, 166 S.W. 470, 473-74 (Tex. Civ. App.--Fort Worth 1914, writ ref'd) (emphasis added). Under article VII, section 6, county permanent school fund interest and other revenue constitute the "available fund." The constitutional provision does not address distribution of a county available school fund. Former Education Code section 17.96(d)² vested the county judge with the power to "annually prorate the available county school fund . . . among the several districts in the county."³

Article VII, section 6b of the Texas Constitution authorizes a commissioners court to distribute the corpus of the county permanent school under certain conditions. It provides in pertinent part that a commissioners court "may reduce the county permanent school fund of that county and may distribute the amount of the reduction to the independent and common school districts of the county on a per scholastic basis." In Attorney General Opinion H-47, this office concluded that the phrase "on a per scholastic basis" means "on the basis of the number of persons residing in the school district eligible by age for free education." Attorney General Opinion H-47 (1973) at 2. That opinion also addressed the problem of scholastics residing in a school district overlapping a county boundary and concluded as follows:

It is our opinion that where a school district lies in counties A and B with the schools physically located in county B, county A, in distributing its county permanent school fund, should allocate to the school district a pro rata

²Enacted by Act of April 24, 1975, 64th Leg., R.S., ch. 478, § 1, 1975 Tex. Gen. Laws 1275, 1276, *repealed* by Act of May 28, 1993, 73d Leg., R.S., ch. 347, § 8.33(2), 1993 Tex. Gen. Laws 1479, 1556 (eff. Sept. 1, 1995).

³In addition, a former rule of the Texas Education Agency addressed the apportionment of the county available school fund, providing as follows:

The county judge of each county having school lands or county-available school fund shall certify before October 1 of each year the amount of the county-available school fund available for distribution to the districts of the county during the year. The county-available school fund shall be apportioned among the districts of the county on the basis of the number of students in average daily attendance in each district in the county during the previous year.

19 T.A.C. § 105.171 (adopted under authority of Act of June 2, 1969, 61st Leg., R.S., ch. 889, 1969 Tex. Gen. Laws 2735, 2827-28), *amended* by 4 Tex. Reg. 3778 (1979), *repealed* by 17 Tex. Reg. 851 (1992). It is not clear whether this rule was intended to require a county judge to distribute the available fund to school districts based on their overall student populations or based on the student population residing in the county. *See also* note 5 *infra*.

part for each "scholastic" residing in the part of the district within county A.

Id. at 3. After the legislature discontinued a scholastic census determining the number of scholastics in each county, this office concluded that "it is incumbent upon the county commissioners as trustees of the fund to formulate a method to determine the scholastic population within a school district." Attorney General Opinion JM-355 (1985) at 5.

We understand that Briscoe County embraces territory of three school districts: (i) Silverton Independent School District, which is located wholly in Briscoe County; (ii) Turkey-Quitaque Independent School District, which also embraces parts of Hall County; and (iii) Clarendon Independent School District, which also embraces parts of Donley County. Since 1972, following consolidation of the Turkey-Quitaque Independent School District in 1971, all interest on the Briscoe County permanent school fund has been paid to Silverton Independent School District. Hall County has distributed the corpus of its county permanent school fund. It allocated a portion of both interest and the corpus of its fund to the Turkey-Quitaque Independent School District based on the district's total average daily attendance, including students residing in Briscoe County.⁴ The crux of your query appears to be whether the Briscoe County Commissioners Court, in distributing the corpus of the Briscoe County permanent school fund, should distribute funds to the Turkey-Quitaque Independent School District given Hall County's allocation of county permanent school fund interest and corpus to the Turkey-Quitaque Independent School District. You also appear to ask whether the Briscoe County Commissioners Court, in distributing the corpus of the Briscoe County permanent school fund, should take into account the Briscoe County permanent school fund interest distributions.

You suggest that the Briscoe County Commissioners Court should not take the Hall County permanent school fund distribution into account in distributing the corpus of the Briscoe County permanent school fund under article VII, section 6b. We agree. Attorney General Opinion H-47 stands for the proposition that under article VII, section 6b, a school district with at least some territory in a county is entitled to a portion of the corpus of the county permanent school fund based on the number of scholastics residing in the part of the district within the county. Thus, for purposes of article VII, section 6b, Turkey-Quitaque Independent School District is a Briscoe County school district and is entitled to a portion of the county permanent school fund corpus.⁵ Furthermore, we

⁴These facts are gleaned from your letter and two letters from Silverton Independent School District officials. We assume for purposes of this opinion that the facts asserted in these letters are true.

⁵We have received a letter from the Texas Education Agency that explains the purpose of county-district numbers. We believe the letter's position is consistent with our conclusion that a school district that includes some territory in a county is entitled to a portion of the county permanent school fund corpus. The letter states as follows: "[The request letter] mentions that the Turkey-Quitaque Independent School District is assigned to Hall County for TEA purposes. For clarification, the Texas Education Agency assigns a county-district number to each school district. A school district that includes territory in more than one county is assigned by number to only one of those counties. The assignment is for administrative purposes and is not intended to have any effect or significance in relation to (continued...)

believe that the Hall County distribution is irrelevant to the Briscoe County distribution. Under article VII, sections 6 and 6b, each county's permanent school fund is legally distinct. The fact that Hall County may have over-compensated certain school districts (and thus under-compensated others) in distributing its county permanent school fund monies has no bearing on the proper distribution of the Briscoe County permanent school fund corpus. Particularly given the fiduciary nature of their duties as trustees of the fund, the Briscoe County Commissioners Court members would be well-advised to adhere to the exact letter of article VII, section 6b in distributing the corpus of the Briscoe County permanent school fund.⁶

For the following reasons, we cannot resolve whether the Briscoe County Commissioners Court, in distributing the Briscoe County permanent school fund, should take into account the fact that following consolidation of the Turkey-Quitaque Independent School District in 1971, interest on the Briscoe County permanent school fund was distributed only to Silverton Independent School District. The relevant statute and agency rule in effect during most of this period appear to have required the county judge to distribute the interest to each school district in the county. *See* note 3 and accompanying text *supra*; *see also* note 5 *supra*. It is not clear from your letter why Briscoe County permanent school fund interest was not distributed to the other two school districts in the county. We cannot assess the propriety of the interest distribution in the absence of facts. Furthermore, it is not clear to us whether the failure to distribute interest to the other two school districts in the county actually worked to their detriment. From 1969 to 1977, for example, county available school funds a school district received were taken into account in determining the amount of foundation school funds the district received from the state.⁷ As a result, during that period, a school district that received less county available school fund money than it was entitled to would have received more state funding while a school district that received more available school fund money than it was entitled to would have received less state funding. We are not able to make findings of fact in the opinion process and therefore cannot assess the overall financial impact of the Briscoe County permanent school fund interest distribution.

⁵(...continued)

the disbursement of county permanent school funds." Letter from David Anderson, Chief Counsel, Texas Education Agency, to Sarah J. Shirley, Chair, Opinion Committee, Office of Texas Attorney General (Nov. 12, 1997).

⁶We agree with your conclusion that it is within the discretion of the Briscoe County Commissioners Court to determine the scholastic population of the county within the three school districts and to prorate the distribution of the corpus of the county permanent fund accordingly. *See* Attorney General Opinions JM-355 (1985), H-47 (1973). We also agree that the commissioners court may distribute the corpus of the fund only for the purposes set forth in article VII, section 6b and that the court must conclude that the funds will be used for those purposes within a reasonable time. *See* Tex. Const. art. VII, § 6b (distribution must be "for the purpose of reducing bonded indebtedness of [the] districts or for making permanent improvements"); Attorney General Opinion JM-355 (1985) at 3-4.

⁷*See* Act of June 2, 1969, 61st Leg., R.S., ch. 889, § 16.79(b), (c), 1969 Tex. Gen. Laws 2735, 2827-28 (enacting Educ. Code § 16.79(b), (c)), *amended by* Act of June 1, 1975, 64th Leg., R.S., ch. 334, § 1, 1975 Tex. Gen. Laws 877, 893 (renumbering Educ. Code § 16.79 as Educ. Code § 16.254), *amended by* Act of July 15, 1977, 65th Leg., 1st C.S., ch. 1, § 13, 1977 Tex. Gen. Laws 11, 26 (deleting county available funds from funds taken into account in determining district's foundation school payment).

S U M M A R Y

A county commissioners court, in distributing the corpus of the county permanent school fund pursuant to article VII, section 6b of the Texas Constitution, should not take into account the distribution of a neighboring county's fund.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary R. Crouter
Assistant Attorney General
Opinion Committee